No. 170.
Brief of Jones & Field for P. E.
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Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

No. 170.

SUPREME LODGE KNIGHTS OF PYTHIAS,
Plaintiff in Error,
vs.
JOSEPHINE R. WITHERS,
Defendant in Error.

In error to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR PLAINTIFF IN ERROR.

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IN THE

Supreme Court of the United States.

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STATEMENT OF CASE.

This action was brought in a state court of Alabama to recover upon a certificate of membership for $3,000 issued by plaintiff in error, in which the defendant in error was named as beneficiary. The suit was removed into the Circuit Court of the United States, where, upon the trial, the defendant in error recovered a judgment which was affirmed in the Circuit Court of Appeals. (89 Fed. Rep., 160; 59 U. S. App., 177; 32 U. S. C. C. A., 182.) The case was then brought by writ of error to this court. The jurisdiction of this court was invoked upon the ground that the suit was one arising under the laws of the United States, as appears by the complaint of

the plaintiff below (Trans., p. 3), upon which ground the cause was removed to the Circuit Court (pp. 6-8), and, therefore, the judgment of the Circuit Court of Appeals was not final.

The Supreme Lodge Knights of Pythias, is a fraternal and benevolent society, incorporated by Act of Congress, approved June 29, 1894 (Ch. 119, 28 Stats., 96), as the successor of a former corporation of the same name organized under an Act of Congress approved May 5, 1870, relating to corporations in the District of Columbia. Its members compose the order of Knights of Pythias, and it is governed by a legislative body known as the Supreme Lodge Knights of Pythias, whose officers were the incorporators.

The beneficial or insurance branch of the order is known as the endowment rank, which is composed of those members of the order who have taken out benefit certificates. Such members are admitted into local subordinate branches, known as sections. The members of each section elect their own president and secretary, and these sections are entirely distinct and separate from the subordinate lodges of the order. The endowment rank is governed by a board of control elected by the supreme lodge, which has entire charge of the affairs of the rank. The officers of the board are a president and secretary, and its place of business is in Chicago. The endowment rank is governed by a constitution and general laws enacted by the supreme lodge, and by rules and regulations adopted by the board of control and approved by the supreme lodge. (The general features of the endowment rank, as an organization, appear in *Knights of Pythias* v. *Kalinski*, 163 U. S., 289, but the particular by-laws in issue here were not involved in that decision.)

January 1, 1883, Robert W. Withers, a Knight of Pythias, made written application for membership in the endowment rank. In the application subscribed by him (Trans., 16–18), and which became a part of the contract of membership, he agreed, viz:

"*I will be governed and this contract shall be controlled, by all the laws, rules and regulations of the order governing this rank, now in force, or that may hereafter be enacted, or submit to the penalties therein contained.*" (p. 18.)

His application was accepted and he received certificates in the first and second classes, March 2, 1883, which he voluntarily surrendered, with a written application for transfer to the fourth class, August 13, 1885, and thereupon received certificate No. 11,072 in that class, for $3,000, dated September 29, 1885, upon which this suit was brought. (pp. 13, 14.)

This certificate recited the original application for membership dated January 1, 1883, the surrender of the former certificate and the application for transfer to the fourth class, which were

"made a part of this contract, * * * and in consideration of the payment hereafter to said endowment rank of all monthly payments as required, *and the full compliance with all the laws governing this rank, now in force or that may hereafter be enacted, and shall be in good standing under said laws*, the sum of $3,000 will be paid by the Supreme Lodge, etc., to Josephine R. Withers, wife, upon due notice and proof of death *and good standing in the rank at the time of death*, * * * and it is understood and agreed that any violation of the within mentioned conditions or the requirements of the laws *in force governing this rank*, shall render this certificate and all claims null and void and the said supreme Lodge shall not be liable for the above sum or any part thereof."

Withers was a member of section No. 432, at Greens-

boro, Alabama, of which one Chadwick was secretary. By the laws of the endowment rank (Trans., 14, 15), Withers was required to pay $4.90 monthly, in accordance with his age and the amount of his endowment. The law provided that such payments should be due and payable to the secretary of the section without notice, on the *first* day of each and every month; failure to make such payment on or before the *tenth* day of the month caused a forfeiture of the certificate and membership, but with the privilege of regaining membership by application and medical examination as in case of new members. (Trans., 14.)

The law governing the payment by the secretary of the section to the board of control at Chicago (Trans., 16) provided (Sec. 6) that he should forward to the board the monthly payments and dues collected *immediately* after the *tenth* day of each and every month, and further provided that

"If such payments and dues *are not received by the board of control on or before the last day of the same month*, the section so failing to pay, and all members thereof, shall stand suspended from membership in the endowment rank, and their certificates, and all right, title and interest therein shall be forfeited. Notice of such suspension shall be forthwith mailed by the secretary of the board of control to the president and secretary of such section.

Provided, That the section whose membership has forfeited their endowment, and whose warrant has been suspended, shall regain all right as a section, and any surviving members thereof (not less than five), shall regain full rights and privileges held previous to such forfeiture, if within thirty days from the suspension of warrant, said section shall pay to the board of control the amount of all monthly payments, assessments and dues accrued upon said members."

"SEC. 10. Sections of the endowment rank shall be

responsible and liable to the board of control for all moneys collected by the secretary, or other officers, from the members for monthly payments, assessments or dues not paid over to the board within the time and manner prescribed by law. Officers of sections are the agents of the members, and shall in nowise be considered as the agents or the representatives of the board of control of the endowment rank or of the supreme lodge."

It will thus be seen that the members were allowed ten days in which to make payment to the secretary, and the latter was required to forward his remittance for the section in time to be *received* by the board of control at Chicago on or before the *last* day of the same month, in default of which the section and all members thereof were suspended and their certificates forfeited, but with the privilege of the section as a whole, or any surviving members (not less than five), of becoming reinstated within thirty days, as provided. (p. 16.)

Withers made payment for October, 1895, to the secretary of his section prior to the 10th of the month. The secretary, however, failed to forward the remittance for the section for October in time to be received by the board on or before the last day of the month; but, on the contrary, the remittance was not mailed from Greensboro until November 1, although he claims to have deposited the letter containing it in the postoffice on the evening of October 31, but after the mails were closed for that day. (Trans., 11.) The envelope enclosing the remittance sheet dated October 31, 1895, and check, was received by the board of control November 4, 1895, and was postmarked "Greensboro, Ala., Nov. 1, 1895." (Trans., 15, 22.)

On November 1, 1895, no remittance from section No. 432 for October having been received by the board of

control, the secretary mailed Chadwick, the secretary of the section at Greensboro, a notice of the suspension of the section and all members thereof, under said section 6 of the laws of the rank. (Trans , 12; Ex. X; p. 15, 16.)

Withers was taken sick and died on November 1, 1895. On November 4, 1895, the remittance having been received by the board of control at Chicago, a postal card receipt was mailed to the secretary of the section, as follows (Trans., 15; Stipulation, pp. 32, 33):

"OFFICE BOARD OF CONTROL,
CHICAGO, Nov. 4th, 1895.

Received of Section No. 432 one hundred thirteen and 30/100 dollars in payment of monthly payment and dues for October, 1895, *on condition that all members for whom above payment is made were living at date of this receipt.*

H. B. STOLTE,
Sec'y Board of Control."

On November 5, 1895, the board received notice of Withers' death and declined payment of the certificate upon the ground that he was not in good standing in the rank at the time of his death, but, on the contrary, stood suspended with the section, whereby the certificate became forfeited. The October dues were returned to the secretary of the section. (Trans., 15.)

The case was tried before the District judge and a jury, upon the documentary evidence and agreed statements of the facts, and at the close of the evidence the court instructed the jury to find a verdict in favor of the plaintiff for the amount of the certificate and interest, to which ruling the defendant excepted, upon which verdict judgment was entered.

The errors assigned to the judgment of affirmance are not printed in the transcript, but are here set forth as the

Specification of Errors.

The Circuit Court of Appeals erred in affirming the judgment of the Circuit Court, and in holding:

I. That there had been no forfeiture of the certificate sued upon.

II. That the secretary of the section was the agent of the board of control, contrary to the express provisions of the by-laws and contract of membership.

III. That the deposit of the remittance in the post office at Greensboro, October 31, 1895, was a payment to the board of control as of that date, contrary to the express provisions of the by-laws and contract of member ship.

ARGUMENT.

The decision of this case requires simply the enforcement of the plain terms and provisions of the contract of membership and the by-laws of the society governing the same. It is not the case of an ordinary "old line" policy of insurance, but a contract of membership between a certificate holder and the fraternal association of which he was a member, in which contract he expressly agreed to be "*governed and controlled by all the laws, rules, &c., of the association then in force, or that might thereafter be enacted.*"

I.

A member of a fraternal association is bound by, and presumed to know, the provisions of the constitution and by-laws of the association, and these enter into and form a part of the contract.

Bacon, Benefit Societies & Life Insurance, Secs. 69, 74, 81.

Niblack, Benefit Societies (2nd Ed.), Secs. 18, 136.

5 Thompson on Corporations, Sec. 5987.

5 Am. & Eng. Ency. of Law (2nd Ed.), 100.

3 *Ibid.*, 1059, 1081–3.

Such member is bound by, and is presumed to take notice of, all by-laws enacted by the society *after his admission*, where, as in this case, the application and certificate so provide.

Bacon, Benefit Societies, &c., Secs. 185, 188.

Niblack, Benefit Societies, &c. (2nd Ed.), Secs. 25-27, 137.

Korn v. *Society*, 6 Cranch, 192, 200; 7 *Ib.*, 396.

Pain v. *Societe, &c.*, 172 Mass., 319, 323.

May v. *Society*, 14 Daly (N. Y.), 389.

Supreme Commandery v. *Ainsworth*, 71 Ala., 436, 449.

Bogards v. *Ins. Co.*, 79 Mich., 440.

Hughes v. *Ins. Co.*, 98 Wis., 292, 297.

Bowie v. *Grand Lodge, &c.*, 99 Cal., 392.

Association v. *Severson*, 71 Conn., 719.

Supreme Council, &c., v. *Adams*, 44 Atl. Reptr. (N. H.), 380.

Fullenwider v. *Royal League, &c.*, 180 Ill., 621, 626.

These rules have been applied in the following cases against this defendant, involving similar contracts:

Supreme Lodge K. of P. v. *Knight*, 117 Ind., 489.

Same v. *LaMalta*, 95 Tenn., 157.

Same v. *Kutscher*, 179 Ill., 340.

Same v. *Trebbe*, 179 Ill., 348.

Daughtry v. *Knights of Pythias*, 48 La. Ann., 1203.

Dornes v. *Supreme Lodge K of P.*, 75 Miss., 466.

Lloyd v. *Supreme Lodge K. of P.* (U. S. C. Ct. App. 7th Cir., Dec. 1, 1899).

In the Circuit Court the decision was placed upon the ground that inasmuch as the member had made his pay-

ment to the secretary in due time, he was not chargeable with the failure of the secretary to forward the monthly remittance to the board of control within the time prescribed in the by-law. In the Court of Appeals the decision was placed upon the ground that a deposit of the money in the postoffice on the last day of the month was a payment to the board of control, and that notwithstanding the provision in section 10, the secretary was the agent of the board of control to receive and forward the dues paid by the individual members.

We contend that in both decisions, the plain, positive and unequivocal terms and provisions of the contract and by-laws governing the same, were ignored, with the result that a contract was forced upon the plaintiff in error entirely different from the one that had been in fact entered into with the member, in violation of the well-settled rule that parties may make their own contracts so long as no rule of public policy is violated thereby.

Granting that the member had made due payment to the secretary of the section, his continued good standing in the endowment rank was expressly conditioned upon the faithful compliance by the secretary with the law in regard to the making of the monthly remittance to the board of control at Chicago, and the liability of plaintiff in error was expressly conditioned upon the good standing of the member in the rank at the time of his death.

The courts have recognized a distinction between contracts of membership in a fraternal society and policies of life insurance issued by corporations conducted for profit, and the strict rules of law applicable to the latter do not apply. As to members of fraternal societies the terms of the contract are to be sought for in the applica-

tion and certificate and in their constitutions and by-laws, and the rights of members are governed accordingly. These societies are formed and carried on for the purpose of securing to the beneficiary of the member pecuniary relief or benefit upon his death, and not for profit. The members of such societies, as in this case, are restricted to those who belong to a certain order, or class, or employment, and in entering the society they mutually agree with each other to be bound by laws enacted by themselves, through their representatives, framed with a view of securing to all the equal benefits of their association; and where such laws violate no statute nor rule of public policy they are binding upon the members aud control the terms of the contract of membership.

5 Am. & Eng. Ency. of Law (2nd Ed.), 100.

In an association like this, where the revenues required for the payment of death losses are wholly derived from payments of members, there must, of necessity, be stringent provisions regulating the collection and payment of the assessments or dues of the members; otherwise the members or their sections will inevitably fall in arrears and the funds be not forthcoming for the payment of losses.

Niblack, Benefit Societies, etc., Sec. 285.

Such provisions are reasonable because they enjoin upon members not only the necessity of promptly paying their dues to the sections, but also the necessity of seeing and knowing that the secretaries make due payment to the board of control.

In *State* v. *Grand Lodge, etc.*, 78 Mo. App., 546, 557, the court said:

"This is, to a certain extent, a mutual insurance company, acquiring the revenue necessary to pay death losses from small periodical assessments on its numerous members scattered over the country. They cannot exist or meet the demand of legitimate losses unless permitted to adopt and enforce reasonable rules and regulations; and courts ought not to interfere with the administration of their affairs except on most cogent reasons."

In *Borgraefe* v. *Knights of Honor*, 22 Mo. App., 127, it is said, p. 142:

"The laws and rules governing the different branches of such an order are in the nature of contracts among all the members, and considering the widespread extent of these organizations, it is highly important, as a principle of public policy, that in cases of this kind their rules and regulations should be substantially upheld by the courts."

In *Carlson* v. *Supreme Council, etc.*, 115 Cal., 466, the court said:

"In mutual benefit societies, provision is almost invariably made in the charter, by-laws, or certificates of membership for assessments upon members for the payment of death losses, and for forfeiture of all rights of membership in case assessments are not paid in accordance with the rules and regulations. Such societies have no practical means of meeting their frequently recurring obligations except by the prompt collection of such assessments, and it has been found necessary to adopt stringent means to enforce their prompt payment."

In *Drum* v. *Benton*, 13 App. (D. C.), 245, 256, the court cited with approval the language of this court in *Insurance Co.* v. *Statham*, 93 U. S., 31, as to the necessity of provisions for a forfeiture in contracts of insurance, and applied the rule to the contracts of a fraternal association, saying:

"The necessity for the strict enforcement of the by-

laws, and the rigid adherence to the remedy by forfeiture for non-payment, is even more imperative in an association like the present than in the case of an ordinary life insurance company."

See, also, *Clark* v. *Association*, 14 App. (D. C.), 154, 174.

It was expressly made a condition of liability in the application and certificate that the member should be in good standing in the rank at the time of his death (p. 13, 18). The contract was not alone that he should duly make his payments to his section; he was further to be and remain in good standing in the rank. His good standing in the rank grew out of and depended upon his membership in the section, for it was only through such membership that he had any rights under his certificate. His membership in the section depended not only upon his own compliance with the laws, but upon like compliance by the section. If the section defaulted in its obligations and thereby became defunct or suspended, his membership fell with it. His own previous compliance with the laws secured his good standing in the rank, so long as his membership in the section continued, but no longer. When that terminated, from whatever cause, he was no longer a member of the rank. The section was the means and agency employed by him to secure the benefits of the rank. When his chosen agency defaulted and lost its connection with the rank his rights terminated. It is so written and provided in the laws by which he expressly agreed that his rights should be controlled. His contract, with the association, in brief, was, that if he should be in good standing in the rank through his membership in the section at the time of his death, the certificate should be paid, otherwise not. At the time of his

death his membership in the section had been lost because that organization had by its default terminated its and his connection with the endowment rank; hence he was not in good standing and there was no liability upon the certificate.

The law is well settled that such provisions are *self-executing* and require no affirmative action on the part of the association or its officers in declaring a forfeiture. The words "shall stand suspended from membership and their certificates shall be forfeited," are unambiguous and clearly imply an *ipso facto* termination of the contract of membership. Such words have repeatedly received this construction.

Niblack, Benefit Societies, &c. (2d Ed.), Sec. 289.

Bacon, Benefit Societies, &c., Sec. 385.

Borgraefe v. *Supreme Lodge, &c.*, 22 Mo. App., 127, 143.

Lehman v. *Clark*, 174 Ill., 279, 292.

Freckmann v. *Supreme Council, &c.*, 96 Wis., 133.

Rood v. *Association*, 31 Fed. Rep., 62.

Carlson v. *Supreme Council, &c.*, 115 Cal., 466.

Yoe v. *Association*, 63 Md., 86.

Supreme Lodge v. *Keener*, 6 Tex. Civ. App., 267.

Drum v. *Benton*, *supra*.

Unless, therefore, the plain provisions of the contract of membership and the by-laws are to be disregarded and other terms substituted, the deceased was not, at the time of his death, a member in good standing in the endow-

ment rank, but on the contrary his membership and certificate had become forfeited. Whatever hardship may result, the rights of the beneficiary—which rest in the contract between the deceased and the defendant—must be ascertained and controlled by the plain terms and provisions thereof.

Campbell v. *Supreme Lodge, K. of P.*, 168 Mass., 397, was a case arising upon substantially the same facts and involved the same provisions in the contract and by-laws. Campbell (the member) had made due payment to the secretary for the month of February, 1895, but the secretary had failed to forward the collections for that month within the time prescribed by the by-laws. On Friday, March 1st, he mailed the remittance to the board of control at Chicago. The letter was received at the Chicago postoffice on Sunday, March 3rd, at 4 A. M., and was delivered by a mail carrier at the office of the board of control on the morning of Monday, March 4th. The board on the same day sent a receipt for the money, expressed to be on condition that all the members for whom the payment was made *were alive at the date of the receipt*. Campbell died on Sunday, March 3rd, at 10 A. M. The court held, upon consideration of the provisions of the same by-laws, that Campbell had become suspended as a member and his rights forfeited, prior to the time of his death, because of the failure of the secretary to forward the remittance in time to be *received* at the office of the board on the last day of February; and that he did not become reinstated by the mailing of the money by the secretary prior to his death and within the time prescribed in the by-laws for reinstatement of living members of the section.

In that case it was expressly held that the money must

be actually *received* by the board of control on or before the last day of the month; otherwise, the section and all members thereof stand suspended after that date, and that the fact that the money was actually deposited in the post-office and in transmission prior to the member's death, was not sufficient to save the forfeiture.

A distinction was sought to be drawn in the brief of counsel for defendant in error and in the opinion of the court below, between the *Campbell* case and the one at bar. It was claimed by counsel that the court did not consider the provision in regard to the payment by the member to the secretary on or before the 10th day of the month. This was not the case, but it was immaterial because it was conceded, as here, that the member had made due payment to the secretary, whose duty it was to collect the payments from the members and forward them to the board of control. The only difference between the cases is that in the *Campbell* case the remittance was not mailed or forwarded until the *first* day of the following month, while in this case the remittance was deposited in the postoffice on the last day of the month, but after the mails had closed for that day. This difference is not important, because, as the court held, it was not the time of *forwarding* the remittance, but the time it was *received* by the board of control at Chicago, that determined the question of forfeiture, and it was held that under the plain provisions of the by-laws the remittance must actually be received on or before the last day of the month, otherwise the member stands suspended with his section.

By-laws providing for a forfeiture of indvidual membership upon the suspension of a subordinate lodge have frequently been sustained by the courts. The membership is attached to the subordinate branch, and the mem

ber must trace his relationship to the grand or supreme lodge through his membership in the subordinate branch. When that ceases, it *ipso facto* terminates his contract relations with the grand or supreme lodge.

In *Young* v. *Grand Lodge Sons of Progress*, 33 Atlantic Reporter, 1038; 173 Pa. St., 302, the by-laws were almost identical with those in this case. The subordinate lodge collected the assessments for the endowment fund from the members upon the requisition of the grand lodge, and forwarded them to the secretary of that body The constitution provided that "lodges not complying with this law within thirty days from date of notice of the death of a member shall forfeit their claim on the endowment fund," etc. The plaintiff had paid his dues to the lodge and was in good standing therein. The plaintiff recovered because certain other provisions of the by-laws as to suspension and reinstatement had not been complied with, but the by-law above referred to was sustained by the trial judge, Thayer (whose opinion was adopted by the Supreme Court), in the following language:

"Doubtless the position assumed by the defendants, that the right of the members of the lodges which constitute the order, to participate in the endowment fund depends upon the compliance of the lodges to which they severally belong with the requirements of the constitution as to collecting and forwarding assessments, of which they are duly notified by the grand lodge, is correct; for section 9 of article 9 expressly provides that the claims of a defaulting lodge upon the endowment fund—that is, of the members of a defaulting lodge, for the lodge, as a lodge, in its collective capacity, can have no such claims—may be forfeited by a non-compliance by the lodge with the requirements of the constitution. The reason of the provision is that the subordinate lodges are the instruments by which the treasury of the endowment fund is

replenished, and by means of which, alone, the grand lodge is enabled to make good its undertaking to pay the members of the order the sum allotted to each by the constitution upon the occurrence of a death. If the lodges are careless or delinquent in collecting and forwarding to the grand lodge the assessment, the treasury of the endowment fund is crippled, and may be unable to meet the just demands made upon it. *The object of the provision is evidently to impose upon the members of each subordinate lodge the duty of seeing that their officers comply with the requisitions for assessments made by the grand lodge.* Hence, the claims of the members upon the endowment fund are made to depend upon the fidelity of the several lodges to which they belong in obeying the requisitions of the grand lodge for assessments, and in promptly forwarding the proceeds. *Being thoroughly understood by the members, it is neither an unjust nor an unwise provision.*"

In *Peet* v. *Knights of Maccabees*, 83 Mich., 92, plaintiff's intestate was a member of a subordinate tent of the order of defendant. The great camp made assessments and required the local tents to collect them from their members and hold them until called for by the great camp. An assessment was called for (No. 23) and another (No. 24) was ordered, May 1, 1888. Peet paid No. 24 May 31, 1888, and the finance keeper of the tent forwarded same June 5, 1888. On the same day, No. 25 was called for. The finance keeper did not charge this to Peet and failed to notify him of it. He failed to notify the great camp of the members who failed to pay 25, as he should have done, and when the assessment was called for he did not forward it to the great camp and the tent was suspended. September 25, 1888, Peet died *and afterwards the tent was reinstated.* One of the by-laws of the great camp was that

"*The subordinate tent shall be the agent of its members in the transmission of all dues and assessments to the*

great camp, and the great camp will in no case be liable for any default or negligence on the part of a subordinate tent, or its officers, in such transmission, etc."

It was held that the by-law was binding and that the certificate of the member was forfeited at the time of his death.

In *Dunn* v. *Relief Association*, 44 Atlantic Reporter, 484 (N. H.), the by-laws provided that to retain membership in the association the member must be in good standing in his lodge and that should he be suspended from his lodge his membership in the association immediately ceased. Dunn was a member of a lodge and was suspended from the membership therein. After his suspension he paid the association all the assessments that were made until his death, which the association received in ignorance of the knowledge that he had been suspended from his lodge; upon learning that fact they sent him a draft, which was returned. The insurance feature of the association was entirely distinct from the business of the lodges (as in this case). The court held that by the very terms of the contract the liability of the association was terminated when Dunn was suspended from his lodge.

In *McClure* v. *Supreme Lodge, &c.*, 59 N. Y. Supp., 764; 41 App. Div., 131, the court held that provisions for suspension of the subordinate lodge, and forfeiture of the rights of its members, for nonpayment to the supreme lodge, were effective notwithstanding the individual member was not in default, if there had been no acts of waiver by the supreme lodge. In that case the local lodge had habitually delayed its payments to the supreme lodge, and the latter had *made no complaint and given no notice or intimation* that a suspension would follow such delinquencies. In the case at bar a notice of

suspension was invariably given when there was a delayed remittance from the section.

In *Scheu* v. *Grand Lodge, etc.*, 17 Fed. Rep., 214, the deceased had not paid his assessment to the subordinate lodge but the latter had paid it for him to the grand lodge, and it was therefore held that the member was in good standing inasmuch as he had not been suspended by the subordinate lodge; but it was said that if the intestate had, in fact, been suspended by the subordinate lodge for the non-payment of the assessment at the time of his death, the plaintiff was not entitled to recover. The by-law in that case required affirmative action on the part of the lodge in suspending a member, and was not self-executing as in this case.

In *Hall* v. *Supreme Lodge*, 24 Fed. Rep., 450, the court recognizes the binding effect of provisions for suspension of subordinate lodges, but held that under the particular facts of that case notice of the assessments from the supreme lodge to the subordinate lodges was a condition precedent to the right of suspension, and if the supreme lodge failed to conform to its laws in regard to the giving of notices the rights of members of the subordinate lodge were not affected.

In *Supreme Lodge* v. *Abbott*, 82 Ind., 1, there was a provision that

"Any lodge failing, neglecting or refusing to forward the assessment to the supreme treasury within thirty days from the date of notice, *should stand suspended*, and that if a death occurred in the lodge during such suspension, no death benefit should be paid."

The court construed this language to mean that no death benefits would be paid *during the time of suspension*, but that if the lodge was reinstated, the rights to

death benefits, which were suspended with the suspension of the lodge, were restored with its reinstatement. The court recognized the validity of a provision that a member lost his rights by the suspension of his lodge, but the particular language of the by-laws was construed as stated.

In the following cases the by-laws were similar to that in the case last cited, and were given the same construction:

Supreme Lodge v. *Turner*, 47 So. Westn. Reptr., 44: (Tex. Civ. App).

Washington Camp v. *Association*, 8 Pa. Dist. Rep., 198.

Contrast the language of the by-laws in these cases with that in this case and the decisions sustain our contention. The by-law under consideration expressly provides that "the section so failing to pay, *and all members thereof*, shall stand suspended, etc., *and their certificates*, etc., *shall be forfeited.*"

In *American Council* v. *National Council*, 43 Atl. Reptr. (N. J.), 2, the by-law providing for suspension of the subordinate lodge, was not, as in this case, self-executing, but required action by the national council.

In *Davidson* v. *Supreme Lodge*, 22 Mo. App., 263, 275, this identical by-law as to suspension of the section was involved, and incidentally, applied.

II.

The provision in section 10 (Trans. p. 16), that officers of sections are the agents of the members and shall in no-wise be considered as the agents or the representatives of the board of control of the endowment rank, or of the

supreme lodge, was valid and binding upon the deceased under his contract of membership.

Under the rule that members of a fraternal society are mutually bound by the provisions of the constitution and by-laws which they are presumed to know, it is competent to provide that the subordinate lodge, and its officers, shall be the agents of the members, and not of the supreme lodge. Such provisions are to be construed so as to give effect to the plain terms of the contract of membership, and the strict rules of agency applicable to ordinary insurance companies, having no such provisions in their contracts, do not apply. In this connection, it is to be borne in mind that the sections of the endowment rank are entirely distinct from the local lodges of the Order of Knights of Pythias, and although such lodges may, under certain circumstances, be considered as agents of the supreme lodge in matters relating to the membership of the order, that rule does not apply to the sections of the endowment rank. The general rule is, as heretofore stated, that by-laws are to be enforced unless they are contrary to some statute or rule of public policy.

It is not claimed that there is any statute contravening this provision; neither is there any rule of public policy forbidding it. On the contrary, such provisions are sustained by public policy as being for the interests of all the members of the society. This case is a proper one for the application of the rule that courts should "not lightly interfere with the freedom of contract" under the guise of enforcing a supposed rule of public policy.

Ins. Co. v. *Ry. Co.*, 175 U. S., 91, 106.

The members of a section elect their own officers, and if those officers neglect their duties, the remedy lies en-

tirely with the members, who can best observe and correct any delinquencies. The provision that officers shall be deemed the agents of the members, and not of the board of control, or of the Supreme Lodge, violates no rule of public policy, is a reasonable one and calculated to secure a faithful discharge of duty. When such a provision is a part of the contract it is the duty of the courts to enforce it, rather than to substitute a different contract.

In *Susquehanna Ins. Co.* v. *Perrine*, 7 Watts & Serg., 348, it was held that a party who became a member of a mutual insurance company was bound by all of its by-laws and by one which provided that a surveyor of the company should be his agent for the purpose of making a description of the property, and that he would be held responsible for the correctness of the application.

A similar provision has been upheld in the following cases:

Peet v. *Knights of Maccabees*, 83 Mich., 92.

Grand Lodge, etc., v. *King*, 10 Ind. App., 639, 649.

Sovereign Camp v. *Rothschild*, 40 S. W. Reptr. (Tex.), 553.

Expressions may be found in a few decisions to the effect that subordinate lodges, and their officers, are agents of the supreme lodge, but these views were expressed in cases where there was no provision to the contrary, as in this case. All authorities agree that the provisions of the constitution and by-laws are to be enforced, and that where these fix the relationship they must control.

Bacon on Benefit Societies, Sec. 426.

Thus, in *O'Connell* v. *Supreme Conclave, etc.*, 102 Geo., 143, the court said:

"Whether the act of an officer of a subordinate lodge of a given order is, in a particular instance, binding upon the 'supreme conclave' of the same order, *depends upon the relation of the former to the latter, as defined by its constitution and by-laws and upon what is therein provided;* and this being so, it cannot, in the absence of necessary information on these points, be intelligently determined whether or not the payment of an assessment to an officer of the subordinate lodge would, in legal contemplation, be a payment to the 'supreme conclave.'"

Officers of subordinate lodges have no power to waive the provisions of the laws of the association that relate to the substance of the contract

McCoy v. *Ins. Co.*, 152 Mass., 272, 275.
Harvey v. *Grand Lodge*, 50 Mo. App., 472, 477.
Curtin v. *Grand Lodge*, 65 *ib.*, 294.
Grand Lodge, &c. v. *Connolly*, 43 Atl. Rep. (N. J.), 286.
Cannon v. *Ass'n*, 43 *ib.* (N. J.), 281, 285.
Ins. Co. v. *Foote*, 79 Ill., 361, 369.
Loeffler v. *Modern Woodmen*, 100 Wis., 79, 85.

In the *Loeffler* case the by-laws provided that no officer was authorized or permitted to waive any of the laws of the order which related to the substance of the contract between the member and the order. This by-law was passed *subsequent to the admission of the plaintiff*. It was held that under the terms of his contract, which bound him to comply not only with the laws then in force, but with *such as might thereafter be adopted*, he was bound by this provision.

The distinction between stock corporations and associations organized on the mutual principle, or fraternal associations which are governed by by-laws adopted by members through their representatives, is well recognized by the courts. See cases cited on page 12, *ante*, and,

Baxter v. *Ins. Co.*, 1 Allen, 294, 297.
Brewer v. *Ins. Co.*, 14 Gray, 203, 209.
Hale v. *Ins. Co.*, 6 Gray, 169.
Miller v. *Ins. Co.*, 42 N. J. Eq., 459.
Ins. Co. v. *Foote*, 79 Ill., 361, 369.
McCoy v. *Ins. Co.*, 152 Mass., 275.

The three decisions relied upon by the Court of Appeals to sustain its conclusion that this provision was ineffectual, are readily disposed of.

In *Whiteside* v. *Supreme Conclave*, 82 Fed. Rep., 275, it appeared that the collector for the subordinate body had been in the habit of extending the time in which the assessments were required to be made by the by-laws and that this practice was known to the officers of the Supreme Conclave; upon these facts the court held that it was a question for the jury whether the provision in the by-laws had not been waived by a course of dealing and practice in variance with its provisions.

In *K. of P.* v. *Bridges*, 39 S. W. Rep., 333 (Tex. Civil App.), it was held by an inferior appellate court in an action against this same defendant, that the knowledge of the officers of the local section that a member had become addicted to the use of intoxicating liquors was the knowledge of the supreme lodge. In that case the death occurred prior to the enactment of section 10 containing the provision hereinbefore referred to, and it was not involved. The decision while not an authority upon the question here involved seems to be in conflict with other decisions of the courts of Texas.

Sovereign Camp v. *Rothschild*, 40 S. W. Rep., 553: In that case the court gave effect to a precisely similar provision in the by-laws and held that the officers of the subordinate camp could not bind the sovereign camp by proceeding in a manner not authorized by the by-laws, and this decision was adhered to upon motion for rehearing and fully sustains our contention.

See, also,

Fitzmaurice v. *Ins. Co.*, 84 Tex., 61.
Hutchinson v. *Ins. Co.*, 39 So. West. Reptr. (Tex.), 325.

Insurance Co. v. *Wilkinson*, 13 Wall., 222, was the case of an ordinary policy of life insurance where the general principles of agency were applied and there was no provision like the one here involved. The case is, therefore, inapplicable.

There are decisions of this court and of the Circuit Courts of Appeals which clearly recognize and enforce the binding effect of a provision in the contract or policy, to the effect that the agent shall be considered the representative of the insured, and not of the company. This is not the case of an agent held out to the public without notice of a limitation of his authority, but a case where, *by the express provisions of the by-laws of the association to which the deceased belonged, and by which his rights were controlled*, the relationship between the section and its officers and the endowment rank was limited and defined.

In *Insurance Co.* v. *Fletcher*, 117 U. S., 519, there was a provision in the application that no statements or representations made, or information given, to the persons soliciting or taking the application for the policy

should be binding on the company or effect its rights, unless they were reduced to writing and presented to the home office in the application. The plaintiff claimed that the agents soliciting the insurance had full information as to the condition of health of the applicant and that their knowledge was the knowledge of the company. This court, however, enforced the provision contained in the application and held that the company like any other principal could limit the authority of its agents and thus bind all parties dealing with them *with knowledge of the limitation.* The court held that the case was very different from *Insurance Co.* v. *Wilkinson*, *supra*, in that the insured had direct notice of the limitation in the contract of the authority of the agent.

The same subject was presented and discussed in an exhaustive opinion by Mr. Justice Harlan presiding in the Circuit Court of Appeals, Sixth Circuit, in *Maier* v. *Fidelity Mutual Life Association*, 47 U. S. App., 329; 78 Fed., 566. In that case the application provided that no verbal statement by whomsoever made could modify the contract or in any manner affect the rights of the association, unless the same was reduced to writing and presented to and approved by the officers of the association at the home office, no agent or examiner having any authority or power to make or alter contracts, waive forfeitures, or grant credit. The court quoted from the opinion in the *Fletcher* case, *supra*, at great length, including that portion distinguishing the *Wilkinson* case, and also reviewed the decisions of the Supreme Court of Michigan, in which state the contract was made, and held that the provision in the application became a part of the contract and binding upon both parties thereto; the court said:

"Such was the contract between the parties, and there is no reason in law or in public policy why its terms should not be respected and enforced in an action on the written contract. It is the impression with some that the courts may, in their discretion, relieve parties from the obligations of their contracts, whenever it can be seen that they have acted heedlessly or carelessly in making them, but it is too often forgotten that in giving relief, under such circumstances to one party, the court may enforce a contract which the other party did not make or intend to make."

The same conclusion was reached by the same court in *Insnrance Co.* v. *Smith*, 92 Fed. Rep., 503; (U. S. App.,) where the above decisions were reviewed and the *Fletcher* case distinguished in an opinion by Lurton, circuit judge, and in the following:

Hubbard v. *Association*, 80 Fed. Rep., 681, 685.

Bernard v. *Association*, 43 N. Y. Supp., 527; 14 App. Div., 142.

Rohrbach v. *Ins. Co.*, 62 N. Y., 47.

McCoy v. *Insurance Co.*, 152 Mass., 272.

Quinlan v. *Ins Co.*, 133 N. Y., 356, 364.

These decisions were, it is true, based upon the express provisions of the applications; but in view of the settled rule, heretofore stated, that a member of a fraternal association is bound by the provisions of the constitution and laws of the association to the same extent as if specifically incorporated in the contract, the decisions are authoritative upon this question. Indeed, the reason is stronger, if possible, why such a member should be bound by such provisions which are an integral part of his contract of membership, and are essential for the protection of his fellow members. It logically follows from

these decisions that the provision of the by-law in question, of which the deceased must conclusively be presumed to have had knowledge, was valid and must control his rights under the contract of membership.

III.

In holding that a deposit of the letter containing the remittance in the mail at Greensboro on the last day of the month, constituted a payment to the board of control as of that date, the Circuit Court of Appeals ignored and nullified the plain provisions of the by-laws, which should control the contract.

The same question arose in *Campbell* v. *Knights of Pythias*, 168 Mass., 397, and the court enforced the provisions of the by-law, holding that the money was not *paid* to the board of control until it was *received* at its office in Chicago.

In many cases the provisions of the contract of insurance provide for or recognize the mailing of a remittance as a sufficient payment, especially where it is shown that it has continued so long as to constitute a practice or course of business on the part of the company.

Kenyon v. *Association*, 122 N. Y., 247, 262.

Van Bokkelen v. *Association*, 90 Hun, 330.

Kendrick v. *Ins. Co.*, 32 So. East. Rep. (N. C.), 728.

This, however, is not such a case, *first*, because the by-law itself plainly provides that the money must be *received* at the office of the board of control on or before the last

day of the month, otherwise the section, and all its members, shall stand suspended; and, *second*, the practice and course of business, as shown by the record, was, that whenever the remittance was delayed, notice of suspension was sent to the section, and when the remittance was actually received, the receipt was so conditioned as to effect the reinstatement of only *surviving* members of the section.

The district judge placed undue stress upon the provision in section 6 that the secretary shall *forward* to the board of control the remittance immediately after the tenth day of each month. If this provision stood alone the reasoning of the learned judge might be persuasive, as it could then be claimed that if the remittance was *forwarded* within a reasonable time a forfeiture would be avoided, but the provision is qualified and controlled by the subsequent provision that if the payment and dues are not *received* by the board on or before the last day of the same month the section and all members thereof shall stand suspended from membership, etc. This provision absolutely controls as to the *time* when the payment shall be made to the board of control, *i. e.*, it must be *received* on or before the last day of the month. No plainer language could have been used in prescribing the time when such payment was required in order to save a forfeiture.

The fact that it was the custom to send the remittance by mail does not alter the case. *Campbell* v. *Knights of Pythias*, *supra*. Unless the money is *received* on the last day of the month, there is no payment. This is further shown by the fact that by one of the rules contained on the remittance blank (p. 23) it is provided that where a bank draft is sent "the credit given the section *on the day of its receipt* is subject to the payment of the draft by the bank upon which it is drawn."

Waiver.

There is no question of waiver in this case. It is shown that whenever the remittances were delayed the board promptly mailed to the secretary notice of the suspension. No specific instances are shown where the remittances were received after the last day of the month, except that in possibly three or four of the instances referred to (Trans., p. 12), the remittances could not have reached the board on the last day of the month. There was, therefore, no waiver by the board of the provision requiring that the remittance should be *received* on the last day of the month. In this instance notice of suspension was mailed to the secretary on November 1st. (Trans., p. 12; exhibit X.)

Such delayed remittances were, of course, always accepted because the section had thirty days in which to regain its membership after a suspension, and the board was bound to accept the money for surviving members when received, under section 6 (p. 16), but the receipts given for the remittances were upon the express condition that all members *were living at the date of receipt*, and such was the receipt in this instance. (Stip., p. 32.)

It is well settled that where a member is permitted to become reinstated after a forfeiture, within a certain time, there must be a compliance with the conditions of payment, etc., *within his lifetime*, and that if he dies, although before the time expires, the forfeiture or suspension stands and cannot be avoided by a payment made by his beneficiary or other person in his behalf. The offer on the part of the society is to reinstate *a living, not a deceased* member.

Carlson v. *Supreme Council*, 115 Cal., 466.
Supreme Lodge, &c., v. *Keener*, 6 Tex. Civ. App., 267, 272.
Bacon, Benefit Societies, Sec. 385, *b*.
Niblack, Benefit Societies (2nd Ed.), Sec. 292.

There can be no waiver where the member dies in the interim between the date of suspension and the date of reinstatement.

Schmidt v. *Modern Woodmen*, 84 Wis., 101.
Ass'n. v. *Miller*, 85 Ky., 88.
Reichenbach v. *Ellerbe*, 115 Mo., 588.
Garbutt v. *Ass'n.*, 84 Ia., 293.
Maginnis v. *Ass'n.*, 43 La. Ann., 1136.
Bagley v. *Grand Lodge*, 31 Ill. App., 618.

It was stated in the brief for defendant in error in the court below that:

"It had been the habit of the secretary of the section for several years to mail his remittance to the board too late to reach Chicago until after the 1st of the month."

This statement is not justified by the record; there is nothing shown except as to the remittances for a year prior to this instance. Of the twelve remittances shown, *eight* were sent in time to have reached the board on the last day of the month, in ordinary course of mail, and there is no proof to the contrary. (Trans., p. 12.) The distance from Chicago to Greensboro is about nine hundred miles. In this case the letter mailed on the 1st probably arrived at Chicago on the 3rd, which was Sunday.

Again it was stated that the board had never notified

the officers of the section of such delinquencies, but it appears that whenever the remittance arrived after the last day of the month, notice of suspension was invariably forthwith sent the section, as in this case. (Trans., p. 12; Exhibit X; p. 15.)

In *Rice* v. *Grand Lodge*, 103 Iowa, 643, it was held that the mere fact that payments had been made and received in many instances after they were due, did not constitute a waiver where the lodge was bound to accept them when paid.

In *French* v. *Ins. Co.*, 169 Mass., 510, the court said:

"The fact that on former occasions late payments had been accepted had no effect in waiving the defendant's rights, since the forms of reinstatement always were insisted upon, and even an agreement that there should be no waiver was required in each case."

To the same effect are:

Crossman v. *Ass'n.*, 143 Mass., 435.
Yoe v. *Association*, 63 Md., 86.

The board had no knowledge of Withers' death at the time the remittance was received and the receipt mailed, and by such receipt it expressly excepted members not then living. Under such circumstances there could be no waiver of the forfeiture. To constitute a waiver there must exist the element of knowledge on the part of the party against whom a waiver is claimed; if this is wanting no waiver can be asserted.

In the opinions of the courts below it was sought to distinguish the case from *Campbell* v. *Knights of Pythias*, 168 Mass., 397, particularly because of the language near the close of the opinion, viz.:

"In the previous instances of delayed payments and waiver, the waiver took effect apparently from the day of

the actual receipt of the money by the board of control. No instance is mentioned where a member died between the time when the money was mailed and the time when it was received."

The latter sentence shows that the court was speaking of an alleged claim of waiver because of the fact *that remittances had been delayed in many instances*, but in those instances it did not appear that any member *had died between the time when the money was mailed and the time when it was received*, and it is not shown in this case that there was any instance where a member had died in the interim between the mailing and the receiving of the remittances; therefore there is no foundation for the claim of waiver.

If in the *Campbell* case, or in this case, repeated instances had been shown where members had died *after* the money had been mailed but before it had been received, and, notwithstanding, the board had accepted and retained the money, then it might have been claimed that such a course and practice of doing business constituted a waiver of the forfeiture, but such contention has no foundation upon this record.

Where the receipts recite that the money is accepted upon the express condition that a member is living, or is in good health, or that the policy is not in force during the period of the default, there is no waiver arising from the receipt and retention of the money.

Bryan v. *Association*, 42 Atlantic Reporter, (R. I.), 513.

Carlson v. *Supreme Council*, 115 Cal., 466.

There is nothing in *Knights of Pythias* v. *Kalinski*, 163 U. S., 289, that conflicts with these contentions. That case was decided upon questions that are not involved here, and upon the ground that the officials of the order were estopped from insisting upon a forfeiture because by the laws governing the endowment rank it was made the duty of the secretary of the section to obtain information as to whether the member was in good standing in his lodge, and the decision was largely controlled by a ruling of the board of control construing the laws involved. There was no provision at that time to the effect that secretaries of sections were the agents of the members and not of the board of control, or of the supreme lodge, and it further appeared that there had been a waiver by the continued receipt of assessments after the forfeiture.

The court recognized the fact that, as the endowment rank was a separate and distinct feature from the lodges, the member might have been ignorant of the fact that a failure to pay his *lodge dues* forfeited his certificate in the endowment rank. In this case a forfeiture is not claimed because of any failure to comply with any laws regulating the relations of the member to his *lodge*, but by reason of specific provisions in the law governing sections of the endowment rank of which the deceased was a member.

It is respectfully submitted that the judgments below should be reversed and a new trial awarded.

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SUPREME LODGE KNIGHTS OF PYTHIAS,
Plaintiff in Error,
vs. No. 170.
JOSEPHINE E. WITHERS.

In Error to the United States Circuit Court of Appeals for the Fifth Circuit.

SUPPLEMENTAL BRIEF ON QUESTION OF JURISDICTION.

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Attorney for Defendant in Error.

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Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

SUPREME LODGE KNIGHTS OF PYTHIAS, PLAINTIFF IN ERROR, v. JOSEPHINE R. WITHERS.	*No.* 170.

In Error to the United States Circuit Court of Appeals for the Fifth Circuit.

SUPPLEMENTAL BRIEF ON QUESTION OF JURISDICTION.

I.

The original Supreme Lodge Knights of Pythias was first incorporated under the Act of Congress of May 5, 1870 (16 Stats. 101), relating to corporations in the District of Columbia.

The present Supreme Lodge exists solely under the Act of Congress approved June 29, 1894 (28 Stats. 96, Ch. 119), which reads as follows:

"An Act to incorporate the Supreme Lodge of the Knights of Pythias.

"*Be it enacted by the Senate and House of Representa-*
" *tives of the United States of America in Congress*
" *assembled*, That George B. Shaw, of the city of Eau
" Claire, State of Wisconsin; William W. Blackwell, of
" the city of Henderson, State of Kentucky; Walter B.
" Richie, of the city of Lima, State of Ohio; Robert L.
" C. White, of the city of Nashville, State of Tennessee;
" Philip T. Colgrove, of the city of Hastings, State of
" Michigan; and Tracy R. Bangs, of the city of Grand
" Forks, State of North Dakota, officers and members of
" the Supreme Lodge Knights of Pythias, and their
" successors, be, and they are hereby, incorporated and
" made a body politic and corporate in the District of
" Columbia by the name of 'The Supreme Lodge Knights
" of Pythias;' and by that name it may sue and be sued,
" plead and be impleaded in any court of law or equity,
" and may have and use a common seal, and change the
" same at pleasure, and be entitled to use and exercise
" all the powers, rights, and privileges incidental to
" fraternal and benevolent corporations within the District
" of Columbia.

" SEC. 2. That the said corporation shall have the
" power to take and hold real and personal estate, not
" exceeding in value one hundred thousand dollars, which
" shall not be divided among the members of the corpora-
" tion, but shall descend to their successors for the pro-
" motion of the fraternal and benevolent purposes of said
" corporation.

" SEC. 3. That all claims, accounts, debts, things in
" action, or other matters of business of whatever nature
" now existing for or against the present Supreme Lodge
" Knights of Pythias, mentioned in section one of this
" Act, shall survive and succeed to and against the body
" corporate and politic hereby created: *Provided*, That
" nothing contained herein shall be construed to extend
" the operation of any law which provides for the ex-
" tinguishing of claims or contracts by limitations of time.

" SEC. 4. That said corporation shall have a constitu-
" tion, and shall have power to amend the same at pleasure:

" *Provided*, That such constitution or amendments thereof " do not conflict with the laws of the United States or of " any State.

" SEC. 5. That said corporation shall not engage in " any business for gain; the purposes of said corpora- " tion being fraternal and benevolent.

" SEC. 6. That Congress may at any time amend, alter, " or repeal this Act."

II.

The entire corporate existence of the Order is hence merged into the single " body politic and corporate " created by the act of 1894, and the property, rights and obligations of the former corporation are, by this statute, placed by succession with the " body politic and corpo- " rate hereby created." It therefore exists, and exists only under this law of the United States, which is in no sense general, but particular and specific in creating this corporation. Judicial controversies in which it is a party, therefore, necessarily involve a law of the United States. In *Osborn* v. *United States Bank* (9 Wheat. 738, 823), this rule was first announced and is plainly pertinent and applicable to the corporation Plaintiff in Error herein, viz :—

" The charter of incorporation not only creates it, but " gives it every faculty which it possesses. The power " to acquire rights of any description, to transact busi- " ness of any description, to make contracts of any de- " scription, to sue on those contracts, is given and meas- " ured by its charter, and that charter is a law of the " United States. This being can acquire no right, make " no contract, bring no suit, which is not authorized by a " law of the United States. It is not only itself the mere " creature of a law, but all its actions and all its rights " are dependent on the same law. Can a being, thus con-

" stituted, have a case which does not arise literally, as " well as substantially, under the law? "

This ruling in *Osborn* v. *Bank* was the foundation of the like ruling in the *Pacific Railroad Removal Cases* (115 U. S. 1). The railroad corporations there involved were creations of federal statute alone, precisely as is the corporation at bar. Were the act of 1894 repealed, it is plain the Supreme Lodge Knights of Pythias would have no corporate existence whatsoever.

III.

The provision of the charter of the Order, whereby it is created a body politic and corporate " in the District of " Columbia " does not alter the fact that it is still, and only a corporation existing under a law of the United States, by direct special enactment. Its habitat in the " District of Columbia " does not alter or affect the situation. It is not made by this special law a corporation OF the District of Columbia. It is, and by the very terms of the charter must needs be, a corporation OF the United States, existing solely under this act of Congress.

IV.

No special legislation exists, within our knowledge, which exempts corporations thus created from the rule of judicial procedure followed *supra*. It is true that by special legislation (act of July 12, 1882, 22 Stats., 162, Ch. 190, Sec. 4, and act of August 13, 1888, 25 Stats., 433, Ch. 866, Sec. 4), National banks are, for jurisdictional purposes, to be deemed citizens of the States in which they are respectively located. But this special provision with respect to National banks demonstrates that all other cor-

porations created by express federal statute (as in the case at bar) necessarily fall within the rule announced in *Bank* v. *Osborn*, and the subsequent numerous adjudications of this Court following the same rule.

V.

The complaint herein affirmatively pleads the defendant Supreme Lodge as "a corporation duly organized and "existing under and by virtue of an act of Congress of "the United States, approved by the President of the "United States on the 29th day of June, 1894, * * *" (Rec. 3), thus justifying the removal of the cause to the Federal Court.

Oregon Short Line, &c., Ry. v. *Skottowe*, 162 U. S. 490-494.

VI.

Counsel for defendant in error challenged the right of removal when petition was filed therefor in the State Court, and was allowed to contest same before the State judge granted removal of the cause (Rec. 8).

VII.

The plaintiff in error is not treated in Alabama as a foreign corporation of a sister State, and hence required to comply with the technical rules of procedure prescribed by the laws of Alabama before it can do business therein, but is treated as a corporation existing under a law of the United States, and hence not within such requirements.

VIII.

Frequent adjudications appear in the Federal Reports involving controversies between this Order and holders of

benefit certificates in the endowment rank thereof, who are citizens of different States. So far as known the right of the Supreme Lodge to invoke the jurisdiction of the Federal Courts has never been ruled adversely therein. Concurrence of the Federal Courts herein, whilst not controlling, should be persuasive.

Respectfully submitted.

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